87-2015

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

BILLY PRINCE,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

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QUESTION PRESENTED

Whether The Decision Of The Illinois Court Affirming The Denial Of The Motion To Vacate Judgment And Withdraw Guilty Plea Was Erroneous Where The Plea Of Guilty Was Entered As A Result Of The Petitioner's Misapprehension Of Law And Fact, And Was Therefore Involuntary In A Constitutional Sense, As The Plea Of Guilty Was Not The Product Of An Intelligent Waiver Of The Privilege Against Compulsory Self Incrimination, Right To A Trial By Jury, And Right To Confront His Accusers.

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PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

PRAYER

The Petitioner, Billy Prince, respectfully prays that a Writ of Certiorari issue to review the judgment of the Illinois Supreme Court entered on April 7, 1988, denying his petition for leave to appeal to that court, and the judgment of the Illinois Appellate Court entered October 13, 1987, affirming the trial court decision.

OPINION BELOW

The Order of the Illinois Supreme Court, as well as the Opinion of the Illinois Appellate Court, First District, appear in the Appendix attached hereto.

JURISDICTION

The judgment of the Illinois Supreme Court was entered on April 7, 1988. This Petition is filed within 60 days of that date. Jurisdiction is invoked under 28 U.S.C. Section 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth and Sixth Amendments to the Constitution of the United States, and Chapter 95½, Section 4-103(a)(1) of the Illinois Revised Statutes are involved herein.

STATEMENT OF THE CASE

Petitioner, Billy Prince, was charged in a ten (10) count indictment with possessing a stolen motor vehicle, removing the vehicle identification number, falsifying that number, and possession of stolen motor vehicle parts. The Petitioner, at his arraignment on August 19, 1985, entered a plea of not guilty. The Petitioner appeared before the trial court on several occasions with his counsel, for the purpose of obtaining discoverable materials, and for the filing of the Petitioner's answer to discovery. No other motions were filed on behalf of the Petitioner.

The Petitioner and his attorney appeared before the Court on June 23, 1986, and having previously requested

and obtaining a pre-sentence investigation report, requested a conference with the Court and prosecutor, pursuant to Illinois Supreme Court Rule 402. The Court informed the Petitioner that at a conference, which would be attended by the Court, the Petitioner's attorney, and the prosecutor, the facts of the case, along with the Petitioner's criminal background and social history would be discussed.

Subsequent to that conference the Petitioner, through his attorney, stated that he was withdrawing his plea of not guilty, and entering a plea of guilty to count one (1) of the indictment, possession of a stolen motor vehicle. The Court then advised the Petitioner of the possible sentence which could be imposed against him, that there would be no trial, and inquired as to whether the Petitioner was pleading guilty voluntarily.

The Court then requested the prosecutor to recite a factual basis for the plea. The prosecutor responded as follows:

> Ms. Dooling: Judge, there will be a stipulation by and between the parties that if a representative from Shaffer Oldsmobile, that owned a 1985 Oldsmobile motor vehicle were to testify, they would testify it was their motor vehicle and that no one gave permission to Mr. Prince to take or have that motor vehicle.
>
> If Detective Miller were called to testify, he would testify he was a Chicago Police Officer on April 14, 1985, he executed a search warrant at 15525 South Perry Avenue in Harvey, Illinois. He would testify that he executed a search warrant upon the garage of the defendant, who stands before the court.
>
> He would testify he found that premises had no license for rebuilding a 1985 Oldsmobile of Shaffer Oldsmobile.

> He would testify that car was recovered on the premises one, the VIN was removed and the motor was defaced and also the windshield was cracked, the federal standards were removed from that vehicle.

The Court then sentenced the Petitioner to a period of three (3) years in the Illinois Department of Corrections.

On July 17, 1986, this Petitioner filed a motion for modification of sentence, a motion to vacate judgment and withdraw guilty plea, and a motion to stay his surrender. The motions for modification of sentence and to stay surrender were denied. On August 1, 1986, the Petitioner filed a supplemental motion to vacate judgment and withdraw guilty plea. In his motion to vacate judgment and withdraw guilty plea the Petitioner stated that he did not have a full and complete understanding of the nature of the offense to which he pleaded guilty. Specifically, the Petitioner claimed he was not cognizant of the elements of the offense, or what proof would be necessary to establish his guilt beyond a reasonable doubt. The Petitioner stated that he was unaware of the knowledge element of the offense, in relation to the prosecution establishing as an element of the offense that he possessed the motor vehicle, knowing it to have been stolen.

The Petitioner claimed that his counsel did not advise him of the knowledge element of the offense, nor did he advise him as to the proof necessary to establish that element. The Petitioner further stated in his motion to vacate judgment and withdraw guilty plea that he believed that the prosecution merely had to establish that the items which were the subject of this prosecution were on his property, and that he was the owner of that property in order to establish his guilt, regardless of the fact that the items were stolen. Additionally, the factual basis

recited to the Court as the basis for the plea was silent as to the knowledge element.

The Petitioner further claimed in his motion that his attorney did not effectively advise him as to all of the elements of the offense of possession of a stolen motor vehicle. The Petitioner also maintained in his motion that due to the manner in which the evidence which was gathered by law enforcement officers, the evidence would be suppressed, and therefore his guilt could not be established beyond a reasonable doubt.

The Court called the Petitioner's attorney as a witness at the hearing on the Petitioner's motion. The attorney stated that he discussed the indictment with the Petitioner, and that he believed he discussed the elements of the offense with the Petitioner.

The Court denied the Petitioner's motion to vacate judgment and withdraw guilty plea. In addressing the Petitioner's claim that he was unaware of all of the elements of the offense, in specific the knowledge element, the Court referred to notes taken at a pre-trial conference held with the prosecution and the Petitioner's attorney. The Court determined that based on facts discussed at the pre-trial conference, there was no basis to set aside the plea of guilty.

The Appellate Court of Illinois, First District, held that the Petitioner's plea of guilty was voluntary, and that the trial court acted properly in denying the motion to vacate judgment and withdraw guilty plea. The Illinois Supreme Court denied the Petition for leave to appeal from the Illinois Appellate Court to the Illinois Supreme Court.

REASONS FOR GRANTING THE WRIT

THE DECISION OF THE ILLINOIS APPELLATE COURT AFFIRMING THE DENIAL OF THE MOTION TO VACATE JUDGMENT AND WITHDRAW GUILTY PLEA WAS ERRONEOUS, WHERE THE PLEA OF GUILTY WAS ENTERED AS A RESULT OF THE PETITIONER'S MISAPPREHENSION OF LAW AND FACT, AND WAS THEREFORE INVOLUNTARY IN A CONSTITUTIONAL SENSE.

The Petitioner maintains that due to his misapprehension as to elements of the offense to which he pled guilty, possession of a stolen motor vehicle, and the proof necessary to establish his guilt beyond a reasonable doubt, his plea cannot stand as an intelligent admission of his guilt. The Petitioner asserts that due to his incomplete understanding of the elements of the offense he did not have a complete understanding of the charge against him, therefore his plea of guilty was defective. Specifically, the Petitioner argues that he was not cognizant of the knowledge element of that offense. As the guilty plea, and waiver of right to trial, was not the product of an intelligent decision by the Petitioner, it is not voluntary in a constitutional sense.

As stated in *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969),

> Several Federal Constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First, is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by reason of the Fourteenth, *Malloy v. Hogan*, 378 U.S. 1. Second is the right to trial by jury, *Duncan v. Louisiana*, 391 U.S. 45. Third, is the right to confront one's accusers, *Pointer v. Texas*, 380 U.S. 400.

> We cannot presume a waiver of these three important rights from a silent record. *Id.* at 243.

Clearly, the issue here involves a substantial Constitutional right. Here, the voluntariness and the consensual character of the plea are called into question, and therefore, the validity of the plea is impaired, *Marby v. Johnson*, 467 U.S. 504 (1984).

The Petitioner entered a plea of guilty to violating Chapter 95½, Section 4-103(a)(1) of the Illinois Revised Statutes, possession of a stolen motor vehicle. This statute reads in pertinent part as follows: (a) It is a violation of this chapter for: (1) A person not entitled to the possession of a vehicle or a part of a vehicle to receive, possess, conceal, sell, dispose, or transfer it, knowing it to have been stolen or converted.

The Petitioner maintains that due to his ignorance of the knowledge element of the offense, his plea cannot stand as an intelligent waiver of his Constitutional rights. The Petitioner contends that due to his ignorance of the knowledge element, he mistakenly believed that the prosecution would merely have to establish that the vehicle was on his property, that he owned the property where the vehicle was located, to establish his guilt beyond a reasonable doubt of the offense of possession of a stolen motor vehicle.

The Petitioner stated in his argument to the trial court and in his affidavit filed with that court in support of his motion to vacate judgment and withdraw guilty plea that he was unaware of the knowledge element of the offense, and that his counsel did not advise him of that element. The stipulation read into the record as a factual basis for the guilty plea was also silent as to the knowledge element of the offense. At no time during the plea, or prior

to the plea, is there an indication on the record that the Petitioner was informed of the knowledge element of the offense. The Petitioner's subjective claim that he was under a misapprehension as to the elements of the offense is supported by the objective fact that the stipulation is void of any reference to the knowledge element. Knowledge is a critical element of this offense, therefore the Petitioner must be notified and understand that element as part of the offense before he can intelligently enter a plea of guilty, the admission of guilt, thereby waiving his right to trial. The Petitioner's right to know the nature and cause of the offense with which he is charged is guaranteed by the Sixth Amendment to the Constitution of the United States. It is constitutionally mandatory that a defendant be specifically informed of each and every essential element of the offense to which he confesses guilt.

As stated in *Marshall v. Lonberger*, 459 U.S. 422 at 439 (1983), "It is well established that a plea of guilty cannot be voluntary in the sense that it constitutes an intelligent admission that the accused committed the offense unless the accused has received real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process." *Smith v. O'Grady*, 312 U.S. 329, 334 (1941), *Henderson v. Morgan*, 426 U.S. 637 (1976).

As stated in *Henderson v. Morgan*:

> Normally the record contains either an explanation of the charge by the trial judge, or at least a representation by defense counsel that the nature of the offense has been explained to the accused. Moreover, even without such an express representation, it may be appropriate to presume that in most cases notice of what he is being asked to admit. *Id.*, at 647.

The record here is silent as to any explanation to the accused as to the elements of the offense. As stated above the stipulation which served as the factual basis for the plea is also silent as to the knowledge element. The Illinois Courts, in resolving this issue looked beyond the record to matters outside the Petitioner's knowledge. In specific, the Illinois Courts looked to conversations held outside the presence of the Petitioner. An examination of the record reveals there is no explanation given to the Petitioner of the elements of the offense to which he is pleading guilty, either by the Court or by defense counsel. The Petitioner stated in his motion and affidavit that no such explanation was given.

The error here is that the Petitioner's guilt has neither been established beyond a reasonable doubt after a trial, nor has he expressly admitted that he possessed a motor vehicle knowing it to have been stolen. The Illinois Courts' attempts to resolve this issue are erroneous in that they fail to address the true issue, was the plea of guilty voluntary in a constitutional sense. For the reasons above, this Court should grant the Writ to correct the injustice done.

CONCLUSION

For the reasons stated above a Writ of Certiorari should be issued to review the judgment on opinion of the Illinois Appellate Court, First District.

Respectfully submitted,

ROBERT L. RASCIA

Attorney for Petitioner

APPENDIX A

FIRST DIVISION
October 13, 1987

86-2141

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,

vs.

BILLY W. PRINCE, a/k/a
WAYNE PRINCE,
Defendant-Appellant.

Appeal from the Circuit Court of Cook County.
Honorable **Matthew J. Moran,** Judge Presiding.

ORDER DISPOSING OF APPEAL UNDER SUPREME COURT RULE 23

Defendant was charged in a 10-count indictment with violating various provisions of section 4-103 of the Illinois Vehicle Code. (Ill. Rev. Stat. 1985, ch. 95½, par. 4-103.) On June 23, 1986, defendant entered a plea of guilty to the first count of the indictment which charged him with

possession of a stolen motor vehicle (Ill. Rev. Stat. 1985, ch. 95½, par. 4-103(a)(1)), and he was sentenced to three years in the penitentiary pursuant to the terms of the plea agreement. Defendant now appeals from the denial of his motion to vacate the guilty plea contending that it was entered as a result of his misapprehension of the law and facts, specifically that he was not cognizant of the knowledge element of the offense.

Count 1 of the indictment charged defendant with the offense of possession of a stolen motor vehicle in that he had possession of a 1985 Oldsmobile which was the joint property of Schaffer Oldsmobile and Motors Insurance Corporation. The count also alleged that defendant was not entitled to the possession of the vehicle and knew it was stolen, in violation of section 4-103(a)(1) of the Vehicle Code.

On June 23, 1986, the defendant's counsel informed the court that the matter should be ready for a conference. The court then informed defendant that at a conference, which would be attended by the court, defendant's attorney and the assistant State's Attorney, the facts of the case, defendant's criminal background and social history would be discussed. Defendant agreed to a conference and the case was temporarily passed. Although the report of proceedings is apparently incomplete, it seems that the court was subsequently informed of defendant's desire to withdraw his plea of not guilty and enter a plea of guilty. The court then informed defendant that his attorney indicated that defendant was pleading guilty to the charge of unlawful possession of a stolen motor vehicle as alleged in count 1. Defendant then confirmed this. The court informed defendant that he could be sentenced to prison for a period of not less than three and up to seven years and a mandatory parole period of two years. Knowing that

possibility, defendant said that he was still pleading guilty. The court then informed defendant that he would be giving up his right to a jury trial, and defendant indicated that he still wished to plead guilty. Defendant further confirmed this course of action was of his own free will and on the advice of his attorney.

The assistant State's Attorney then recited a factual basis for the plea in the form of a stipulation that a representative from Schaffer Oldsmobile would testify that it owned a 1985 Oldsmobile, and no one gave defendant permission to take or have that motor vehicle. Chicago police detective Miller would testify that he executed a search warrant at defendant's garage located at 15525 South Perry Avenue in Harvey, Illinois, and found the premises had no license for rebuilding the 1985 Oldsmobile which he found there. He also saw that the VIN (Vehicle Identification Number) of the car had been removed from the vehicle, the Federal standards had been removed, the motor was defaced and the windshield was cracked.

The court then accepted the defendant's plea of guilty and sentenced him to the minimum term of three years in the penitentiary with a mandatory parole period of 2 years.

On July 17, 1986, defendant filed a written motion to vacate the plea of guilty, along with a separate motion to modify the sentence. The motion stated that defendant did not understand the charges against him, and his counsel did not provide adequate representation. On August 1, 1986, defendant filed a supplemental motion to vacate the judgment, alleging that he did not have a complete understanding of the offense, and of the elements necessary to establish his guilt, in particular, that he had a misconception as to the knowledge element of the offense,

and mistakenly believed that mere presence on his property of the vehicle established guilt regardless of his knowledge or absence of knowledge concerning the vehicle and its ownership. Defendant also stated that the stipulation presented to the court was silent as to the knowledge element of the offense. Defendant filed an affidavit in support of the motion setting forth his belief that the prosecution would be unable to sustain its burden of proof as to all of the elements of the offense as charged in the indictment and that he entered a plea of guilty due to the "misconception" he harbored concerning the elements of the offense.

At a hearing on August 1, 1986, the court called defendant's original attorney who testified that prior to the entry of the plea of guilty, he discussed the elements of the charges with defendant. He discussed the indictment and the nature of the case and potential penalties. Counsel explained that he had been a prosecuting attorney from 1973 through 1981 and had practiced criminal law as a defense counsel since then. He recounted that he went over each count in the indictment with defendant explaining, based on police reports and discovery tendered, how the State would prove each charge and informing defendant that in his opinion there would be a finding of guilty on each charge. He told defendant that the State would have to prove as an element of the charge alleged that the 1985 Oldsmobile would have had to have been possessed knowing it to have been stolen. At no time did defendant indicate a lack of understanding of the proceedings or the sentence.

In making its findings, the trial court generally reviewed the guilty plea proceedings. Concerning the claim of lack of knowledge by defendant and defendant's belief that 'mere possession of the vehicle without requisite knowl-

edge was enough to convict him, the court said that according to its notes of the pretrial conference, there was discussion of the fact that four to six automobiles and stolen parts were on defendant's premises. The court concluded there was substantial compliance with Supreme Court Rule 402 (107 Ill. 2d R. 402), the plea was understandingly made, and there was no reason to set aside the sentence other than defendant's subsequent change of mind. When counsel pointedly argued an absence of knowledge by defendant, the court referred to the sworn testimony of previous counsel that he had discussed the elements of the offense, in particular the knowledge element, with defendant.

Defendant contends that he believed the prosecution would merely have to establish that the vehicle was on his property and that he owned the property where the vehicle was located, in order to establish beyond a reasonable doubt his guilt of possession of a stolen motor vehicle. Section 4-103(a)(1) set forth below does provide that exclusive, unexplained possession over a stolen or converted vehicle or an essential part thereof, may give rise to an inference of knowledge that the vehicle or part is stolen or converted:

> "Offenses relating to motor vehicles and other vehicles—felonies. (a) It is a violation of this Chapter for:
>
> (1) A person not entitled to the possession of a vehicle or part of a vehicle to receive, possess, conceal, sell, dispose, or transfer it, knowing it to have been stolen or converted; additionally the General Assembly finds that the acquisition and disposition of vehicles and their essential parts are strictly controlled by law and that such acquisition and disposition are reflected by documents of title, uniform invoices, and bills of sale. It may be inferred, there-

> fore that a person exercising exclusive unexplained possession over a stolen or converted vehicle or an essential part of a stolen or converted vehicle has knowledge that such vehicle or essential part is stolen or converted, regardless of whether the date on which such vehicle or essential part was stolen is recent or remote; * * *."

Nevertheless, defendant points out that the stipulation was silent concerning the knowledge element of the offense and the trial court did not specifically admonish defendant concerning this element. The stipulation, defendant contends, does not comply with Rule 402(c) which requires a determination that a factual basis exists, and he insists he has not expressly admitted that he possessed a motor vehicle knowing it to have been stolen. Defendant especially relies on *Henderson v. Morgan* (1976), 426 U.S. 637, 49 L. Ed. 2d 108, 96 S. Ct. 2253, in which defendant's plea of guilty to second degree murder was found to be involuntary because there was no indication in the record that defendant understood that an intent to cause the death of his victim was an element of the offense.

Whether a guilty plea may be withdraw is within the trial court's sound discretion, unless it appears defendant entered the plea through misapprehension of facts or law, defendant has a defense worthy of consideration, or there is doubt about defendant's guilt and justice would be better served by trial. (*People v. Hanna* (1987), 155 Ill. App. 3d 805, 812, 508 N.E.2d 765.) It has been held that Supreme Court Rule 402 does not require the court to explain to the defendant separately each of the elements of the offense, and there is sufficient compliance with the Rule if an ordinary person in the circumstances of defendant would understand what the charges are. (*People v. Hopson* (1981), 101 Ill. App. 3d 564, 573, 428 N.E.2d 680.) In *People v. Barker* (1980), 83 Ill. 2d 319, 330-332, 415

N.E.2d 404, defendant's statement at a sentencing hearing that he had no intention to take life was found insufficient to negate the requisite mental state for the offense so as to render defendant's pleas of guilty to attempted murder involuntary. Our supreme court distinguished *Henderson v. Morgan* because Barker—like defendant in this case—was informed by the indictment that he was charged with performing certain acts with the intent to commit murder, whereas in *Henderson v. Morgan* the accused had never been formally charged with second degree murder, only first degree murder.

Nor is it correct, as defendant argues, that the trial court's failure to admonish defendant concerning every element of the offense is either a violation of Rule 402 or enough to render a plea involuntary. In *People v. Cosey* (1978), 66 Ill. App. 3d 670, 384 N.E.2d 95, the court considered the effect of the trial court's failure to inform the accused that he was charged with specific intent crimes. The court said a defendant did not need to be informed of every element of a charged offense before a guilty plea could be accepted and the failure to inform the defendant was not a violation of his constitutional rights. (66 Ill. App. 3d 670, 673.) The *Cosey* court said that *Henderson v. Morgan* held that, if under the totality of the circumstances the accused did not understand the nature of the charges, the guilty pleas are rendered involuntary but voluntariness was not to be determined by whether a ritualistic litany of the formal legal elements of an offense was read to defendant. 66 Ill. App. 670, 674.

In *Henderson v. Morgan*, the Supreme Court stated that a plea of guilty could not be voluntary in the sense that it constituted an intelligent admission that defendant committed the offense "unless the defendant received 'real notice of the true nature of the charge against him, the

first and most universally recognized requirement of due process.' " (426 U.S. 637, 645, citing *Smith v. O'Grady*, (1941), 314 U.S. 329, 334, 85 L. Ed. 859, 61 S. Ct. 572.) As indicated above, Morgan, indicted for first degree murder, pleaded guilty to second degree murder, but was not informed that intent to cause the death of his victim was an element of the latter offense. The defendant in *Morgan* had never been formally charged with second degree murder and the Supreme Court found nothing in the record to serve as a substitute for either a finding after trial, or a voluntary admission that defendant had the requisite intent. (426 U.S. 637, 646.) The Supreme Court explained that defendant did not purport to stipulate to the fact, it was not explained to him that his plea would be an admission of the fact and he made no factual statement or admission necessarily implying that he had such intent. In meeting an argument that its decision would invite countless collateral attacks on guilty plea judgments, *Morgan* observed that the record normally contains either an explanation of the charge by the trial judge, or at least a representation by defense counsel that the nature of the offense has been explained to the accused and that it could be appropriately presumed that in most cases defense counsel routinely explained the nature of the offense in sufficient detail to give the accused notice of what he is being asked to admit. (426 U.S. 637, 647.) In the case at bar, it is not necessary to rely on a presumption. The trial court heard the explicit testimony of defendant's original trial counsel concerning his explanations to defendant, specifically regarding the intent element. Defendant's answer to the testimony of his former counsel now is to say that he disputed it in his affidavit. The record is silent, defendant states, as to any express discussion of the elements of the offense between counsel and defendant. But counsel's sworn testimony to the contrary estab-

lished that counsel explained to defendant that the State would have to prove defendant possessed the 1985 Oldsmobile knowing it to have been stolen. This testimony established that defendant's plea of guilty was voluntary and the trial court acted properly in denying defendant's motion to vacate the guilty plea.

Therefore, the judgment of the circuit court of Cook County is affirmed. As part of our judgment we grant the State's request and assess defendant $50 as costs for this appeal.

Dated at Chicago, Illinois, this 13th day of October, 1987.

AFFIRMED.

BUCKLEY, J., O'CONNOR, JR. and MANNING, JJ.

APPENDIX B

ILLINOIS SUPREME COURT
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April 7, 1988

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No. 66472— People State of Illinois, respondent, v. Billy W. Prince, etc., petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on April 29, 1988.